"That statement of the law has stood for thirty-five years and, so far as we are aware, has never been the subject of adverse comment".

A few months later that decision was approved by the House of Lords in the case of *Stirland.*[6] In that case the Lord Chancellor (Viscount Simon) said (at p. 46):—

"When the transcript is examined, it is evident that no reasonable jury, after a proper summing up, could have failed to convict the appellant on the rest of the evidence to which no objection could be taken. There was, therefore, no miscarriage of justice and this is the proper test to determine whether the proviso to section 4(1) of the Criminal Appeal Act, 1907, should be applied."

and he went on to say:—

"The Court of Criminal Appeal has recently in *Haddy*....correctly interpreted section 4(1) of the Criminal Appeal Act."

Considering the admissible evidence in the present case, which was in no way contradicted, we are of the opinion that no reasonable trier of fact could have failed to convict the appellant.

For these reasons we dismissed the appeal.

Appeal dismissed.

RE HOON TYE WAN

[Misc. Cr. App. (Ong J.) September 26, 1964]

[Ipoh — Miscellaneous Criminal Application No. 14 of 1964]

Constitutional Law — Citizen of Malaysia by operation of law — Malaysia Act, 1963, s. 23 — Constitution of Malaysia, arts. 9 and 14(1)(c) — Constitution of Singapore, art. 54(1) — Singapore Citizenship Ordinance, 1957, s. 4.

Banishment — Whether Singapore citizen who becomes citizen of Malaysia by operation of law banishable — Banishment Ordinance, 1959, s. 5.

A citizen of Singapore who becomes a Malaysian citizen by operation of law under article 14 of the Constitution of Malaysia is not banishable.

[Editorial Note: The Singapore Citizenship Ordinance, 1957, was repealed by article 69 of the Constitution of Singapore.]

MISCELLANEOUS CRIMINAL APPLICATION.

Applicant in person.

Pawan Ahmad bin Ibrahim Rashid (State Legal Adviser, Perak) for the Minister for the Interior.

Ong J.: This is an application under section 10 of the Banishment Ordinance, No. 11 of 1959, to set aside a banishment order made by the Honourable the Minister against the subject pursuant to section 5. Now, section 5 provides that a banishment order can only be made in respect of any person *not being a citizen of the Federation.* That is in accordance with Article 9 of the Constitution, which enacts that no citizen shall be banished from the Federation.

In an application to set aside the order, the burden of proof that he is a citizen of the Federation lies upon the applicant. In this particular instance, the Legal Adviser, Perak, has considered and accepted the fact of the applicant's birth in Singapore, as evidenced by a birth certificate produced by him. He contends, however, that birth in Singapore *ipso facto* could not confer citizenship status upon the applicant, as article 54(1) of the present Singapore Constitution only applies to persons after the coming into operation of the Constitution. He further contends that the only way the applicant could be a citizen of Singapore in his particular circumstances would be by registration or enrolment, or naturalisation.

It is abundantly clear that the Legal Adviser was not aware of the existence of the Singapore Citizenship Ordinance, No. 35 of 1957, under section 4 of which every person (subject to the proviso therein) born in the Colony *before* on or after the date of the coming into operation of Part III of that Ordinance shall be a citizen of Singapore by birth. That Ordinance came into force on the 1st day of November, 1957. Section 23 of the Malaysia Act re-enacts article 14 of the Constitution and in clause (1)(c) makes provision for every citizen of Singapore to become a citizen by operation of law on the relevant date.

In the circumstances, there is no doubt whatsoever that the applicant is not banishable and I, therefore, set aside the order of banishment and direct that he be forthwith set at liberty.

Order of banishment set aside.